

Answer by letter-Wieler

March 6, 1970

OPINION LETTER NO. 186



Mr. Harry Wiggins, Supervisor
Department of Liquor Control
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Wiggins:

This is in response to your request for an opinion as to the question whether or not it is necessary for the Supervisor of Liquor Control to tender witness fees in advance to persons subpoenaed to testify at hearings within the Supervisor's jurisdiction when such persons reside farther than forty (40) miles from the place of hearing.

Section 311.660, subsection 8, RSMo 1959, provides that the Supervisor has the power:

"To issue subpoenas and all necessary processes and require the production of papers, to administer oaths and to take testimony."

However, Chapter 311 does not contain any specific provisions regarding payment of witnesses who are required to attend hearings before the Supervisor of Liquor Control. Whenever there is not a conflict with a specific provision or provisions contained in Chapter 311, the Administrative Procedure and Review Act (Chapter 536) applies to questions concerning procedure in an administrative hearing before the Supervisor of Liquor Control. See State ex rel. Zimmermann v. Moran, 439 S.W.2d 503, 504 (Mo. 1969).

Section 536.077, RSMo 1959, provides:

". . . The witness shall be entitled to the same fees and, if compelled to travel more than forty miles from his place of residence, shall be entitled to the same tender of fees for travel and

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attendance, and at the same time, as is now or may hereafter be provided for witnesses in civil actions in the circuit court, such fees to be paid by the party or agency subpoenaing him, except where the payment of such fees is otherwise provided for by law. . . ."

Section 491.130, RSMo 1959, provides:

"A witness shall not be compelled to attend, as such, in a civil suit, at a greater distance than forty miles from his place of residence, unless his legal fees for traveling, in going to and returning from the place of trial, and one day's attendance, are paid or tendered to him at the time of summoning such witness."

Therefore, it is our opinion that a witness subpoenaed by the Supervisor of Liquor Control to testify at a hearing before the Supervisor where such hearing is held at a greater distance than forty miles from the witness' place of residence must be tendered his legal fees for traveling to and from the hearing and one day's attendance fee at the time he is summoned.

Yours very truly,

JOHN C. DANFORTH
Attorney General